

UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF NEW YORK

UP STATE TOWER CO., LLC and )  
BUFFALO-LAKE ERIE WIRELESS )  
SYSTEMS CO., LLC, )  
Plaintiffs, )  
v. ) Case No. 1:19-cv-280  
THE TOWN OF CHEEKWAGA, NEW )  
YORK and THE TOWN BOARD OF THE )  
TOWN OF CHEEKWAGA, NEW )  
YORK, )  
Defendants, )  
and )  
WEST SENECA CENTRAL SCHOOL )  
DISTRICT, )  
Intervenor-Defendant and )  
Third-Party Plaintiff, )  
v. )  
SOUTHLINE LITTLELEAGUE, INC. f/k/a )  
SOUTHLINE ATHLETIC ASSOCIATION, )  
Third-Party Defendant. )

**ORDER**

Plaintiff filed this case pursuant to a limited preemption provision of the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B). The case concerns a long-running dispute over the siting and permitting of a cell phone tower within the Town of Cheektowaga. The parties include defendants Town of Cheektowaga and the Town Board of Town of Cheektowaga, intervenor West Seneca Central School District, and third-party defendant Southline Little League, Inc.

West Seneca Central School District filed an answer and a counterclaim on September 20, 2019. Plaintiffs failed to file an answer to the counterclaim as a result of law office error. In November 2019, the School District moved for a default since no answer or motion to dismiss had been filed. Plaintiff opposes the entry of default.

The court DENIES the motion for default. The case is at an early stage. The oversight within the law office has resulted in no prejudice to the School District or significant delay. Discovery has not commenced. The court favors resolution of cases on the merits with briefing from both sides. For these reasons, the court allows an additional 30 days from the present date for plaintiffs to respond to the counterclaim.

The next step in the case will be a motion to dismiss or for summary judgment to be filed by the School District within 30 days. The normal response times shall apply.

Dated at Rutland, in the District of Vermont, this 17<sup>th</sup> day of June, 2020.



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Geoffrey W. Crawford, Chief Judge  
United States District Court